

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ERROL MARTIN III, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

MARQUISHA JANIECE PROFIT,

Respondent-Appellant,

and

ERROL LOUIS MARTIN, JR.,

Respondent.

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In the Matter of ERROL MARTIN III, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ERROL LOUIS MARTIN, JR.,

Respondent-Appellant,

and

MARQUISHA JANIECE PROFIT,

Respondent.

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UNPUBLISHED

April 20, 2010

No. 292608

Wayne Circuit Court

Family Division

LC No. 07-475649

No. 292816

Wayne Circuit Court

Family Division

LC No. 07-475649

Before: DAVIS, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother appeals as of right from an order terminating her parental rights to the minor child under MCL 712A.19b(3)(b)(ii), (g), and (j); and respondent father appeals as of right from the same order terminating his parental rights under MCL 712A.19b(3)(b)(i), (g), (j), (k)(vi), and (n). We affirm as to both parents.

The minor child, Errol (d/o/b 8/11/07), was the biological child of both parents. Respondent mother had another son, Jaeshawn (d/o/b 9/19/06), who died as a result of severe abuse inflicted while respondent mother left both children in respondent father's care.<sup>1</sup> Respondent father was eventually convicted of first-degree child abuse and felony murder of Jaeshawn. Prior to the death, respondents had a relationship involving considerable domestic violence, most of which was directed against respondent mother. On at least one occasion, the police were summoned, and they reported observing broken furniture and marks on respondent mother's neck. The evidence consistently showed that respondent father had nevertheless appeared to be a good caregiver for the children. And other than one incident of losing his temper and throwing a television, he was otherwise a fairly passive person; the parents simply set each other off. Jaeshawn had been injured at least once previously while in respondent father's care, leading respondent mother and treating physicians at the ER to suspect abuse, but doctors either concluded that abuse had not occurred or found other reasons for apparent injuries.

Respondent father argues that the trial court clearly erred in finding that the statutory bases for termination were established by clear and convincing evidence because his conviction for child abuse and felony murder should not have been considered where the conviction was under appeal.<sup>2</sup> Respondent father cited no authority in support of his theory and, therefore, has abandoned the issue on appeal. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). The conviction notwithstanding, we find that petitioner established at least one statutory basis for termination by clear and convincing evidence, based on the medical examiner's testimony and respondent father's statement to police. MCL 712A.19b(3). We also find that the trial court did not clearly err in finding that termination of respondent father's parental rights was in Errol's best interest, and so we affirm the trial court's order terminating respondent father's parental rights.

While there was some evidence that respondent mother was active in her children's lives, there was also considerable evidence that she did not act as an adequate caretaker of them. Testimony and medical notes indicate that Jaeshawn was not up to date on his immunizations for some considerable time, Errol had a rash that some testimony indicated got worse whenever he was with his mother, there was evidence of improper discipline and general concern that respondent mother was simply not capable of parenting in any realistic manner. Most

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<sup>1</sup> We spend much of this opinion discussing Jaeshawn because Errol's termination was largely based on what happened to Jaeshawn. This case was decided on June 11, 2009, when Errol was not yet aged two.

<sup>2</sup> That appeal is pending in this Court in Docket No. 293703.

disturbingly, despite the violence respondent father directed toward her and her own belief that respondent father was likely to harm the children, she largely left both children to be cared for by respondent father. Leaving her children in the care of someone who she believed<sup>3</sup> was likely to, or was capable of, hurting her children is compatible with a finding of abandonment and neglect. We are persuaded that the trial court did not clearly err in finding MCL 712A.19b(3)(g), failure to provide proper care and custody, established.

MCL 712A.19b(5) provides, “If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child’s best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” Because termination is required if even one ground is established, provided the trial court finds doing so to be in the child’s best interests, we need not consider the alternative bases for termination. The court in this case found termination of the mother’s rights to also be in the child’s best interests and we find no error in that determination.

Affirmed.

/s/ Alton T. Davis

/s/ Karen M. Fort Hood

/s/ Deborah A. Servitto

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<sup>3</sup> We recognize that there was considerable testimony to the effect that respondent father appeared to some witnesses to have been a good father up to the time of Jaeshawn’s death, but we are concerned here with what respondent mother believed, not what others believed or what medical personnel could or could not find evidence of.